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Before the

FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j) of the
Communications Act — Competitive Bidding
for Commercial Broadcast and Instructional
Television Fixed Service Licenses

MM Docket No. 97-234

Reexamination of the Policy Statement on
Comparative Broadcast Hearings

GC Docket No. 92-52

Proposals to Reform the Commission's
Comparative Hearing Process to
Expedite the Resolution of Cases

GEN Docket No. 90-264

TO: The Commission

**JOINT COMMENTS OF PARTIES TO
COMPARATIVE RENEWAL PROCEEDINGS**

1. These comments are submitted on behalf of licensees and parties who are involved in or related to seven of the eight remaining comparative renewal proceedings mentioned in Paragraph 101 of the above-captioned Notice of Proposed Rulemaking ("NPRM"). Since each of those licensees and parties (collectively "the Joint Renewal Commenters") endorses the points set forth herein, they are submitting their comments jointly in the interest of enhancing the convenience and efficiency of the Commission's consideration of these important matters.

2. The following parties comprise the Joint Renewal Commenters:

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A. Trinity Broadcasting of Florida, Inc. ("TBF"), the licensee of WHFT(TV), Miami, Florida, against which a competing application has been filed by Glendale Broadcasting Company ("Glendale").

B. Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("TBN"), the licensee of WHSG(TV), Monroe, Georgia, against which a competing application has been filed by Glendale, and the licensee of KTBN-TV, Santa Ana, California, against which competing applications have been filed by Maravillas Broadcasting Company ("Maravillas") and Simon T.

C. Trinity Broadcasting of New York, Inc. ("TBNY"), the licensee of WTBY(TV), Poughkeepsie, New York, against which a competing application has been filed by Maravillas.

D. Reading Broadcasting, Inc. ("RBI"), the licensee of WTVE(TV), Reading, Pennsylvania, against which a competing application has been filed by Adams Communications Corporation ("Adams").

E. Two If By Sea Broadcasting Corporation ("TIBS"), which has been authorized by the United States Bankruptcy Court, District of Connecticut, to acquire WHCT(TV), Hartford, Connecticut, from the licensee, Martin W. Hoffman, Trustee-In-Bankruptcy ("the Trustee"). Commission action on the pending assignment application has been precluded because a competing application filed by Alan Shurberg d/b/a Shurberg Broadcasting of Hartford is pending against the Trustee's renewal application. TIBS is a party to the renewal proceeding.¹

¹In addition to the Joint Renewal Commenters' direct involvement in the Miami, Monroe, Santa Ana, Poughkeepsie, Reading, and Hartford proceedings, a competing application filed by
(continued...)

3. Initially, the Joint Renewal Commenters agree with the sentiment in Paragraph 102 of the NPRM that settlement is the preferable approach to resolving the few remaining comparative renewal proceedings. Several of those Commenters have been actively pursuing such resolution and are hopeful that positive results will be forthcoming shortly.

4. Assuming *arguendo* that the Commission deems itself bound to continue processing the few remaining competing applications,² the Joint Renewal Commenters also agree with the fundamental premise of the NPRM that, for comparative purposes, the earning by the incumbent licensee of a renewal expectancy is so significant as to be dispositive of any comparative proceeding. Accordingly, those Commenters agree that the proposed two-step process will best produce the result that will serve the public interest in continuing positive broadcast service with the most efficient use of Commission resources. The Joint Renewal Commenters thus support the proposed two-step process and concur with the Commission's analysis in the Cellular Order cited in Paragraph 102 of the NPRM that such a process is legal and judicially sustainable.

¹(...continued)

Maravillas against the renewal application of KNMT(TV) in Portland, Oregon, relates closely to matters involving TBF and TBN in the Miami proceeding. Indeed, one of Maravillas' principals is the controlling principal of Glendale, the competing applicant in the Miami proceeding.

²Since the ability to adopt sustainable comparative criteria in the aftermath of the Bechtel and Adarand decisions is highly doubtful, the Commission may wish to consider the feasibility of dismissing all applications competing with incumbent licensees and putting a final end to the comparative renewal process. Such an approach would not violate Ashbacker Radio Corp. v. FCC, 326 U.S. 148 (1945), because that decision's requirement for a comparative hearing presumed the existence of standards on which such a hearing can be resolved, and because no current competing applicant can claim a vested interest in any new standards that the Commission may, after years of reconsideration and appeal processes, ultimately and successfully adopt.

5. The Joint Renewal Commenters also submit that, in resolving this important matter, the Commission's action must be informed by the long record showing that competing renewal applications often are not *bona fide* and deserving of any comparative process at all. See, e.g., In the Matter of Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, 3 FCC Rcd 5179 (1988) (Commission inquiry into concerns that "unscrupulous parties may be using the renewal process for private gains unrelated to any public interest aims thereunder"); WWOR-TV, Inc., 7 FCC Rcd 636 (1992), *affirmed sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993) (competing applicant abused process by filing solely to obtain a cash settlement from the existing licensee). Indeed, in one of the few comparative renewal proceedings remaining today, the competing applicant has not had reasonable assurance of its proposed transmitter site for *over eight years* and is subject to numerous grounds requiring its dismissal and disqualification.³ In another of the remaining cases, the competing applicant is comprised of principals who in an earlier case dragged the Commission through a *ten-year* comparative proceeding only, upon being declared victorious, to return the station to the incumbent licensee for a payment of many millions of dollars.⁴ Such parties plainly do not deserve to mire the Commission in more costly and time consuming proceedings, especially when Congress

³See Petition To Dismiss Application of Shurberg Broadcasting of Hartford, File No. BPCT-831202KF, filed August 14, 1997, and Reply To Opposition To Petition To Dismiss Application of Shurberg Broadcasting of Hartford, filed October 1, 1997.

⁴See Application of Adams Communications Corporation, File No. BPCT-0630KG, Exhibit 2; Video 44, 5 FCC Rcd 6383 (1990), *recon. denied*, 6 FCC Rcd 4948 (1991); and Video 44, FCC 92I-097.

has mandated that the notion of comparative hearings in both renewal and new proceedings is headed for extinction.

6. Accordingly, while the proposed two-step process for resolving comparative renewal proceedings is the prudent approach to take when a comparison must be made, the Commission should specifically recognize in this proceeding that even a hearing on renewal expectancy would be unnecessary, wasteful, and inefficient in many or all of the comparative renewal cases that remain. Indeed, through the prospect of settlement agreements and dismissal or disqualification of competing applicants that are not *bona fide*, it is entirely possible that the few remaining comparative renewal cases can be resolved without another comparative proceeding ever needed.

7. In adopting the two-step process as the means for resolving comparative renewal proceedings, therefore, the Commission should also adopt procedures to ensure itself that such process is employed and the Commission's resources are expended only for proceedings that are truly comparative because the competing applicant is truly *bona fide*. When the competing applicant is not, as is so often the case, a hearing on the licensee's entitlement to a renewal expectancy would be superfluous and wasteful. For these reasons, the Joint Renewal Commenters submit that the Commission should adopt the following process for dealing with the few remaining comparative renewal proceedings:

A. The Commission should announce and implement as its policy that any settlements submitted in comparative renewal proceedings will receive priority, expedited disposition. As noted, the Commenters are hopeful that this policy alone will soon permit resolution of some or all of the remaining comparative proceedings.

B. The Commission should announce and implement as its policy that any petitions to dismiss or deny competing applications in comparative renewal proceedings will receive priority, expedited disposition. This policy will enable the Commission to identify promptly those proceedings in which a competing applicant is not *bona fide* and the proceedings therefore are not really comparative renewal cases needing any comparative process at all. Adoption of this policy is likely to reduce further or eliminate any need for more comparative proceedings.

C. The Commission should adopt the proposed two-step comparative renewal process for use only in those proceedings, if any, that remain as actual comparative renewal proceedings after application of the policies described in A and B.

D. With respect to specific criteria, the Commission should explicitly hold that a competing applicant whose principals voluntarily chose not to provide broadcast service to the public in a prior proceeding in which the Commission granted them that right is not a *bona fide* competing applicant and is subject to dismissal pursuant to B above. The fact that an applicant's principals have previously declined to provide service for which they have sought and obtained the authority to provide is a wholly objective measure that is directly related to and completely undercuts the reliability of the applicant's proposed public service. Parties who have evidenced a predilection to sell out their public interest proposals in the past do not warrant Commission tolerance and the expenditure of Commission resources to do so again. Because this consideration is based on prior performance rather than future promises, and because the public interest is seriously harmed by conducting long hearings for the benefit of unreliable parties who have walked away from their proposals before, implementing this consideration through dismissal of the competing application (a) has great public interest significance that relates directly to the central issue of the likely (or, more

pertinently, the unlikely) provision of the competing applicant's proposed service; (b) is administratively workable and, indeed, highly efficient and justified; and (c) requires no mechanism to monitor future adherence to comparative commitments. Thus, the consideration meets the touchstones of Paragraph 103 of the NPRM and should be adopted.

Accordingly, the Joint Renewal Commenters respectfully submit that the Commission should proceed as set forth above.

Respectfully submitted,

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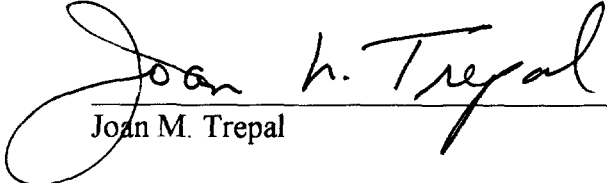
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January 26, 1998

CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Fleischman and Walsh, L.L.P., hereby certify that on this 26th day of January, 1998, copies of the foregoing "Joint Comments of Parties to Comparative Renewal Proceedings" were sent by first class mail, postage prepaid, to the following:

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